



**Written Testimony of Richard Rothstein**  
**Distinguished Fellow of the Economic Policy Institute**  
**and Senior Fellow, Emeritus,**  
**NAACP Legal Defense and Educational Fund, Inc.**  
**on behalf of himself and**  
**Sherrilyn Ifill**  
**President and Director-Counsel**  
**NAACP Legal Defense and Educational Fund, Inc.**

**Before the United States Senate Committee on Banking, Housing and Urban  
Affairs**

**Hearing on “Separate and Unequal: The Legacy of Racial Discrimination in  
Housing”**

**April 13, 2021**

Good morning Chairman Brown, Ranking Member Toomey, and members of the Committee. Thank you for the opportunity to testify this morning. My name is Richard Rothstein, and I am a Distinguished Fellow of the Economic Policy Institute and a Senior Fellow, Emeritus, of the NAACP Legal Defense and Educational Fund, Inc. I am here this morning on behalf of myself and of Sherrilyn Ifill, the president and director-counsel of the NAACP Legal Defense and Educational Fund, Inc.

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) was founded in 1940 by Thurgood Marshall and is the nation’s first and foremost civil rights law organization.<sup>1</sup> LDF was launched at a time when the nation’s aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, achieve racial justice, and fulfill the promise of equality for all Americans. Since its inception, LDF has worked to combat racial segregation and promote racial integration and opportunity through housing. LDF played a seminal role in successfully challenging practices that reinforced residential segregation, including the landmark Supreme Court case *Shelley v. Kramer*,<sup>2</sup> in which the Supreme Court held that state courts could not enforce racially restrictive covenants in housing deeds. With the 1968 passage of the Fair Housing Act, Congress recognized residential segregation as a critical problem that threatened to undermine America’s movement toward racial equality. Sadly, residential racial segregation persists and has, indeed, increased in some

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<sup>1</sup> LDF has been an entirely separate organization from the NAACP since 1957.

<sup>2</sup> 334 U.S. 1 (1948).

cities and counties across the country.<sup>3</sup> The consequences of entrenched racial segregation are devastating for communities and families<sup>4</sup> and for our country. LDF has continued challenging housing, transportation and other policies that reinforce residential segregation, including as co-counsel in *Thompson v. HUD*,<sup>5</sup> the case successfully challenging segregated public housing practices in Baltimore, Maryland, and in numerous amicus briefs<sup>6</sup> filed in Supreme Court cases raising claims under the Fair Housing Act.

Through purposeful policy decisions, the federal government created a system in which housing and homeownership became critical to the economic stability and upward mobility of families. But those same policies also routinely excluded Black Americans. Indeed, through both *de jure* and *de facto* policies, Black Americans were excluded from accessing the very benefits and opportunities that propelled white Americans into the middle class.

Federal government policies have been central to creation and perpetuation of this disparity. In fact, although discriminatory practices of state and local governments, the real estate industry, private mortgage lenders, and private property owners played a critical role in perpetuating racial segregation in housing, the entrenched segregated landscape of this

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<sup>3</sup> Jenny Schuetz, *Metro areas are still racially segregated*, Brookings Institution (Dec. 8, 2017), <https://www.brookings.edu/blog/the-avenue/2017/12/08/metro-areas-are-still-racially-segregated/>; John R. Logan and Brian J. Stults, *The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census*, Brown University (2011), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report2.pdf>.

<sup>4</sup> Huiping Li, Harrison Campbell & Steven Fernandez, *Residential Segregation, Spatial Mismatch and Economic Growth across US Metropolitan Areas*, *Urban Studies* 50, no. 13, (Oct. 2013), <http://journals.sagepub.com/doi/abs/10.1177/0042098013477697>; Richard Rothstein, *The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods- A Constitutional Insult*, Economic Policy Institute (Nov. 12, 2014), <http://www.epi.org/publication/the-racial-achievement-gap-segregated-schools-and-segregated-neighborhoods-aconstitutional-insult/>.

<sup>5</sup> 348 F. Supp. 2d 398 (D. Md. 2005).

<sup>6</sup> NAACP Legal Defense and Educational Fund, Inc., Brief in Support of Respondents, *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc* 576 U.S. 519 (2015), <https://www.naacpldf.org/wp-content/uploads/Texas-v-ICP-LDF-Brief-in-Support-of-Respondents-13-1371.pdf>

country was most powerfully created, supported, and sustained by the actions of the federal government through most of the 20th century.

Policies such as redlining, mandated racially restrictive covenants, segregation in federal public housing, and other racially discriminatory housing policies prevented African Americans from buying homes outside of proscribed areas.<sup>7</sup> While the Fair Housing Act of 1968 sought to prohibit discriminatory policies going forward, the government undertook no serious assessment or policy of restitution to address the decades of past harm, exclusion and discrimination caused by federal policies and practices.

As a result, America's contemporary housing, real estate, and environmental landscape has been layered atop an infrastructure created by decades of racially discriminatory housing practices and policies. Because, as a nation, we have never truly reckoned with or attempted to dismantle the structure created by past discriminatory housing policies, segregation has been literally grandfathered into the developing American landscape decade after decade. It is time for a change.

The federal government's obligation to compel compliance, enforce anti-discrimination laws and provide reparation for the harms perpetrated under discriminatory laws has long been neglected, and redress is long overdue. The failure of the federal government to properly remedy these injustices has compounded into a situation of multiple crises: homeownership is

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<sup>7</sup> Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, (New York, NY: Liveright Publishing Corporation 2017); Lisa Rice, *Long Before Redlining: Racial Disparities in Homeownership Need Intentional Policies*, Shelterforce, (Feb. 15, 2019), <https://shelterforce.org/2019/02/15/long-before-redlining-racial-disparities-in-homeownership-need-intentional-policies/>; Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, MA: Harvard University Press, 1998); Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (New York: W. W. Norton & Company, 2005); Robert C. Lieberman, *Shifting the Color Line: Race and the American Welfare State* (Cambridge, MA: Harvard University Press, 1998).

out of the reach of many Americans, renters are overburdened by costs,<sup>8</sup> the current minimum wage is inadequate to pay housing costs in most major cities,<sup>9</sup> affordable public housing is scarce<sup>10</sup> and housing infrastructure is neglected.<sup>11</sup> It is past time for the government to take bold action to ensure that equal opportunity applies to homeownership and affordable housing. Housing issues remain at the core of our nation's structural inequality.<sup>12</sup> LDF is profoundly aware of the need for strengthened enforcement of the nation's fair housing laws in the continued struggle against racial segregation but this body also has a responsibility and an opportunity, to ensure that our housing infrastructure is updated to reflect the fair, non-discriminatory and inclusive vision contemplated by the Fair Housing Act of 1968.

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<sup>8</sup> Whitney Airgood-Obrycki, Alexander Hermann & Sophia Wedeen *The Rent Eats First: Rental Housing Affordability in the U.S.*, Joint Center For Housing Studies, Harvard University (Jan. 2021), [https://www.jchs.harvard.edu/sites/default/files/research/files/harvard\\_jchs\\_rent\\_eats\\_first\\_airgood-obrycki\\_hermann\\_wedeen\\_2021.pdf](https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_rent_eats_first_airgood-obrycki_hermann_wedeen_2021.pdf); *American Families Face a Growing Rent Burden*, Pew Charitable Trusts (April 2018), [https://www.pewtrusts.org/-/media/assets/2018/04/rent-burden\\_report\\_v2.pdf](https://www.pewtrusts.org/-/media/assets/2018/04/rent-burden_report_v2.pdf);

<sup>9</sup> Alicia Adamczyk, *Minimum wage workers cannot afford rent in any U.S. state*, CNBC (Jul. 15, 2020), <https://www.cnbc.com/2020/07/14/minimum-wage-workers-cannot-afford-rent-in-any-us-state.html>; *Out of Reach 2020: How Much do you Need to Earn to Afford a Modest Apartment in Your State?*, National Low Income Housing Coalition (last visited April 8, 2021), <https://reports.nlihc.org/oor>.

<sup>10</sup> Susan J. Popkin, *The Current State of Public Housing*, Testimony before the House Financial Services Committee (Feb. 5, 2020), [https://www.urban.org/sites/default/files/publication/101678/The%2520Current%2520State%2520of%2520Public%2520Housing\\_12.pdf](https://www.urban.org/sites/default/files/publication/101678/The%2520Current%2520State%2520of%2520Public%2520Housing_12.pdf); Corianne Payton Scally et. al., *The Case for More, Not Less: Shortfalls in Federal Housing Assistance and Gaps in Evidence for Proposed Policy Changes*, Urban Institute (Jan. 4, 2018), [https://www.urban.org/research/publication/case-more-not-less-shortfalls-federal-housing-assistance-and-gaps-evidence-proposed-policy-changes/view/full\\_report](https://www.urban.org/research/publication/case-more-not-less-shortfalls-federal-housing-assistance-and-gaps-evidence-proposed-policy-changes/view/full_report).

<sup>11</sup> Pam Fessler, *Why Affordable Housing Could Become Harder To Find*, National Public Radio, (Jan. 9, 2018) <https://www.npr.org/2018/01/09/576535681/advocates-fear-tax-bill-will-worsen-u-s-affordable-housing-shortage>; Alan Greenblatt, *The Importance (and Neglect) of America's 'Middle Neighborhoods'*, *Governing* (June 2018), <https://www.governing.com/archive/gov-middle-neighborhoods-government.html>.

<sup>12</sup> Tanvi Misra, *Why America's Racial Wealth Gap Is Really a Homeownership Gap*, Bloomberg CityLab (March 12, 2015), <https://www.bloomberg.com/news/articles/2015-03-12/a-new-report-finds-that-eliminating-the-racial-homeownership-gap-will-greatly-reduce-the-wealth-gap>; Patrick Sharkey, Keeanga-Yamahtta Taylor & Yaryna Serkez, *The Gaps Between White and Black America, in Charts*, *New York Times* (Jun. 19, 2020), <https://www.nytimes.com/interactive/2020/06/19/opinion/politics/opportunity-gaps-race-inequality.html>.

## The Discriminatory Policies of the 20<sup>th</sup> Century

After the Great Depression, the federal government enacted policies that helped establish homeownership as a key pillar of the white middle class<sup>13</sup>—while intentionally excluding Black, Hispanic, Asian American Pacific Islander, and Native communities. During the 20<sup>th</sup> century, the federal government sought to stabilize financial conditions for homeownership by establishing the Home Owners’ Loan Corporation (“HOLC”) in 1933, the Federal Housing Administration (“FHA”) in 1934, and the secondary mortgage market. However, in practice these agencies engaged in explicit discrimination by providing publicly backed, low down payment, fixed-rate home mortgage loans almost exclusively to white Americans.<sup>14</sup>

The HOLC, a government agency, was charged with refinancing home mortgages in default to prevent foreclosure. To determine which mortgages to refinance, HOLC drew color-coded maps to assess the risk of default within an area. HOLC maps labeled neighborhoods green for “best,” blue for “still desirable,” yellow for “definitely declining,” and red for “hazardous” and high credit risk simply because of the race of the residents.<sup>15</sup> The latter areas – those bordered by a “redline” – were most often majority Black or non-white areas. In this way Black communities were branded as undesirable with disastrous economic consequences for residents and homeowners. This practice relegated and restricted Black people to living in areas with lower levels of investment than their white counterparts —the effects of which

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<sup>13</sup> *The Color of Law* supra note 5; Mehrsa Baradaran, *Jim Crow Credit*, 9 U.C. Irvine L. Rev. 887 (2019) <https://scholarship.law.uci.edu/ucilr/vol9/iss4/4>;

<sup>14</sup> *Id.*

<sup>15</sup> Bruce Mitchell & Juan Franco, *HOLC “Redlining” Maps: The Persistent Structure of Segregation and Economic Inequality*, National Community Reinvest Coalition (March 20, 2018), <https://ncrc.org/holc/>.

persist today.<sup>16</sup> A study by the National Community Reinvestment Coalition finds that three out of four neighborhoods redlined in the 20<sup>th</sup> century are economically disadvantaged.<sup>17</sup> Hundreds of redlined maps are available to view through the University of Richmond’s Mapping Inequality project.<sup>18</sup>

These maps were federal government designations. Indeed, redlining was considered best practice by the federal government.<sup>19</sup> That is, the federal government considered it best practice to purposefully discriminate against Black and brown communities in approving—or denying—loans, extending credit, or otherwise have a lending presence in certain communities in order to maintain racially white neighborhoods. These policy choices prevented generations of Black families from gaining equity in homeownership or making improvements to homes already owned. The policies robbed entire communities, Black communities, of opportunities to accumulate capital, amass intergenerational wealth and enjoy equal protection under the law. Despite the homeownership boom in the 1950s and 1960s, which sent homeownership rates in the U.S. from 30 to 60 percent, 98 percent of the loans approved by the federal government between 1934 and 1968 went to white applicants.<sup>20</sup>

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<sup>16</sup> Aaron Glantz & Emmanuel Martinez, *For people of color, banks are shutting the door to homeownership*, *Reveal News* (Feb. 15, 2018), <https://revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/>; Maria Godoy, *In U.S. Cities, The Health Effects Of Past Housing Discrimination Are Plain To See*, *Public Radio* (Nov. 19, 2020), <https://www.npr.org/sections/health-shots/2020/11/19/911909187/in-u-s-cities-the-health-effects-of-past-housing-discrimination-are-plain-to-see>.

<sup>17</sup> HOLC “Redlining” Maps *supra* note 17.

<sup>18</sup> Robert K. Nelson, et al., *Mapping Inequality: Mapping in New Deal America*, *American Panorama*, (accessed April 9, 2021), <https://dsl.richmond.edu/panorama/redlining/#loc=5/45.074/-114.829>.

<sup>19</sup> Khristopher J. Brooks, *Redlining’s legacy: Maps are gone, but the problem hasn’t disappeared*, *CBS News* (Jun. 12, 2020), <https://www.cbsnews.com/news/redlining-what-is-history-mike-bloomberg-comments/>.

<sup>20</sup> Sam Fulwood III, *The United States’ History of Segregated Housing Continues to Limit Affordable Housing*, *Center for American Progress* (Dec. 15, 2016), <https://www.americanprogress.org/issues/race/reports/2016/12/15/294374/the-united-states-history-of-segregated-housing-continues-to-limit-affordable-housing/>.

Government policies played a significant role in the development of white suburbs, and in providing a “refuge” to those engaged in “white flight” as a means to avoid school integration, mandated by the Supreme Court’s decision in *Brown v. Board of Education*.<sup>21</sup> The Veterans Administration (“VA”) and the FHA operated on the misguided, unfounded, and racist belief that property values of white neighborhoods would decline if African Americans were permitted to integrate<sup>22</sup> and therefore financed entire suburbs as white enclaves, refusing to insure loans to Black families and veterans.<sup>23</sup> The FHA employed a system of discriminatory lending in government-backed mortgages, as evidenced by the practices described in its official Underwriting Manual.<sup>24</sup> The FHA reinforced and entrenched residential segregation in American cities by refusing to underwrite mortgages for potential homeowners not seeking to purchase in same-race neighborhoods.

Levittown, the famously mass-produced post-war suburb, long maintained a population that was 100% white.<sup>25</sup> The community’s 17,000 houses, which sold for \$7,990 with a 0% down payment for veterans,<sup>26</sup> were denied to Black veterans despite the guarantees of the Servicemen’s Readjustment Act of 1944, also known as the G.I. bill. The G.I. bill offered veterans education and unemployment benefits while also guaranteeing loans for veterans who borrowed money to purchase a home, business, or farm. However, Black veterans returning

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<sup>21</sup> 347 U.S. 483 (1954).

<sup>22</sup> *The Color of Law* supra note 5.

<sup>23</sup> Erin Blakemore, *How the GI Bill's Promise Was Denied to a Million Black WWII Veterans*, History.com (updated Sep. 30, 2019), <https://www.history.com/news/gi-bill-black-wwii-veterans-benefits>.

<sup>24</sup> Federal Housing Administration, *Underwriting Manual: Underwriting and Valuation Procedure Under Title II of the National Housing Act (1938)*, <https://www.huduser.gov/portal/sites/default/files/pdf/Federal-Housing-Administration-Underwriting-Manual.pdf>.

<sup>25</sup> Collin Marshall, *Levittown, the prototypical American suburb – a history of cities in 50 buildings, day 25*, The Guardian, (April 28, 2015), <https://www.theguardian.com/cities/2015/apr/28/levittown-america-prototypical-suburb-history-cities>.

<sup>26</sup> *Id.*



home were routinely denied the option of buying cheap and affordable housing with no down payment that propelled their white counterparts into the middle class and were excluded from “all-white” enclaves like Levittown. Indeed, in 1947, only two of the more than 3,200 VA-guaranteed home loans in thirteen Mississippi cities went to Black borrowers.<sup>27</sup> And in New York and the northern New Jersey suburbs, fewer than 100 of the 67,000 mortgages insured by the G.I. bill supported home purchases by non-whites.<sup>28</sup>

By guaranteeing affordable mortgages for white families and excluding Black families or limiting Black families to purchase in less economically advantageous neighborhoods, the government created, encouraged, and reinforced intense residential racial segregation throughout the nation.

“White flight,” or the creation of white suburbs, was also undergirded by massive federal investments in the construction of the interstate highway system. The federal government often took possession of homes and land in Black communities by claiming eminent domain in order to construct highways as physical barriers between white neighborhoods and areas with a large presence of African Americans or communities of color.<sup>29</sup>

Notably, the government also established the Public Works Administration (“PWA”) Housing Division in 1933<sup>30</sup> which sponsored public housing construction and slum clearance to improve the housing conditions of low-income white families. The PWA routinely razed Black

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<sup>27</sup> Ira Katznelson & Suzanne Mettler, *On Race and Policy History: A Dialogue about the G.I. Bill*, *Perspectives on Politics* 6, no. 3 (2008) <http://www.jstor.org/stable/20446759>.

<sup>28</sup> *Id.*

<sup>29</sup> Steve Inskeep, *A Brief History Of How Racism Shaped Interstate Highways*, National Public Radio (April 7, 2021), <https://www.npr.org/transcripts/984784455>.

<sup>30</sup> Initially named the *Federal Emergency Administration of Public Works* the agency was renamed the Public Works Administration in 1935. *Records of the Public Works Administration [PWA]*, National Archives (last accessed April 12, 2021), <https://www.archives.gov/research/guide-fed-records/groups/135.html>.

neighborhoods, which were often viewed as slums as a result of government policies, in order to create new housing projects that would deny Black applicants.<sup>31</sup> Federal and local governments also promoted segregation in the private market by implicitly endorsing the use of racially restrictive covenants in deeds to prevent the sale of homes to Black families; blockbusting--in which real estate agents would persuade white families to sell their homes at low costs and then resell the vacant homes to Black families at inflated prices; and refusing to intervene to protect Black families from racist vigilante violence when moving into white neighborhoods.<sup>32</sup>

The confluence of these discriminatory policies and practices provided many white Americans an opportunity to amass wealth and create a stable financial foundation to protect themselves from unforeseen economic setbacks—an opportunity that was unjustly and purposefully denied to many Black and brown families. Because housing is the primary means by which families pass generational wealth, a lack of intergenerational wealth among Black families forces each successive generation to start anew, without a firm foundation to build upon.<sup>33</sup>

### **Two Unequal Americas**

Any investigation into the current housing, affordability, eviction, and infrastructure crises reveals a system of deliberate and discriminatory government policy. This country is still living with the consequences of decisions made by federal government officials in the 20<sup>th</sup>

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<sup>31</sup> *The Color of Law* supra note 5

<sup>32</sup> *Id.*

<sup>33</sup> Michela Zonta and Sarah Edelman, *Toward Jobs and Justice: Where You Live Matters*, Center for American Progress (2017), <https://www.americanprogress.org/issues/economy/reports/2017/01/09/296114/toward-jobs-and-justice/>

century. Due to lackluster enforcement of anti-discrimination laws, efforts to rectify these policy decisions have thus far resulted in superficial and immaterial progress. In fact, Black homeownership today, remains at levels similar to 1968, when the Fair Housing Act was passed.<sup>34</sup> Indeed, the gap between white and Black homeownership rates is the largest it has been since 1890.<sup>35</sup> The homeownership rate for Black Americans is 42%, compared to white homeownership of 72.1%, and 48.1% for Latinos.<sup>36</sup>

High rates of housing discrimination nationwide persist today in both housing rentals and sales.<sup>37</sup> More than four million instances of housing discrimination occur each year, and the vast majority are unreported.<sup>38</sup> A 2020 study found that racial discrimination was the second most reported type of housing discrimination comprising 16.47 percent of all cases.

Unfortunately, our nation remains largely segregated by race. We have indeed become the two societies, warned of by Kerner Commission: “one black, one white—separate and unequal.”<sup>39</sup> Areas in which discrimination persist, expose a pernicious chain reaction: when any American is denied equal access to housing, it reduces their access to good jobs, quality

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<sup>34</sup> Alanna McCargo and Jung Hyun Choi, *Closing the Gaps: Building Black Wealth Through Homeownership*, Urban Institute (November 2020), [https://www.urban.org/sites/default/files/publication/103267/closing-the-gaps-building-black-wealth-through-homeownership\\_0.pdf](https://www.urban.org/sites/default/files/publication/103267/closing-the-gaps-building-black-wealth-through-homeownership_0.pdf).

<sup>35</sup> Adam Levitin, *How to Start Closing the Racial Wealth Gap*, The American Prospect (June 17, 2020), <https://prospect.org/economy/how-to-start-closing-the-racial-wealth-gap/>.

<sup>36</sup> *Closing the Gaps: Building Black Wealth Through Homeownership* supra note 14.

<sup>37</sup> Jeffrey Dillman, *Symposium: New Strategies in Fair Housing: New Strategies for Old Problems: The Fair Housing Act* at 40, 57 Clev. St. L. Rev. 197, 201-202 (2009), <https://engagedscholarship.csuohio.edu/clevstrev/vol57/iss2/3/>.

<sup>38</sup> *Report Housing Discrimination*, National Fair Housing Alliance (last accessed April 2, 2021), <https://nationalfairhousing.org/report-housing-discrimination/>.

<sup>39</sup> U.S. National Advisory Commission on Civil Disorders, *The Kerner Report* (New York: Pantheon Books, 1968).

education, safe streets, reliable transportation and a clean and healthy environment.<sup>40</sup> It is Congress' duty to repair the damage that is so evident before us.

The promise of the American Dream—a home, a safe community, and opportunity for upward mobility—is often presented as attainable through hard work, individual tenacity, and diligent personal savings. But the promise of that dream remains perpetually out of reach for many. A safe, affordable, place to live is unattainable for many Americans, not because of personal failings, but because of the government's failure to compel housing markets to comply with anti-discrimination laws, and the unwillingness of the government to provide African Americans and communities of color with the same opportunities that were given to white communities after the Great Depression.

Housing represents more than just a physical dwelling—it allows for the creation of a shared community, for access to clean air and water, good public schools, proximity to quality jobs, access to reliable public transit, and recreational spaces.<sup>41</sup> As the foundation of the American Dream, homeownership is also the primary way that most families build generational wealth and economic stability. However, the stark racial inequality and segregation perpetrated by government policy has resulted in little change in Black wealth, homeownership and/or neighborhood conditions. A recent study found that Black families making \$100,000 typically live in neighborhoods comparable to ones in which white families making \$30,000 live.<sup>42</sup> These

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<sup>40</sup> Patrick Sharkey, *Neighborhoods and the Black White Mobility Gap*, Pew Charitable Trusts (July 2009), [https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/economic\\_mobility/pewsharkeyv12pdf.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/economic_mobility/pewsharkeyv12pdf.pdf)

<sup>41</sup> Emily Badger & Quoc Trung Bui, *Detailed Maps Show How Neighborhoods Shape Children for Life*, New York Times (Oct. 1, 2018), <https://www.nytimes.com/2018/10/01/upshot/maps-neighborhoods-shape-child-poverty.html>.

<sup>42</sup> Matthew Kredell, *Sociologist reports only minor progress in racial equality over last 40 years*, USC Sol Price Center for Social Innovation (Feb. 27, 2015), <https://priceschool.usc.edu/sociologist-reports-only-minor-progress-in-racial-equality-over-last-40-years/>.

disadvantaged neighborhoods are characterized by a lack of resources, poor public schools, health disparities, and limited economic opportunities.<sup>43</sup> Despite individual economic success, Black families have been exposed to and relegated to these neighborhoods by government policy and inaction for decades.

### **Historic and ongoing systemic racism has left families of color more vulnerable**

Decades of structural racism created tremendous racial disparities in housing and homelessness. Renters of color are much more likely to be housing cost-burdened: 52% of Latino renters and 54% of Black renters are cost-burdened, more than 10 percentage points higher than white renters.<sup>44</sup> Black Americans represent roughly 13% of the general population but are 40% of people experiencing homelessness and more than 50% of homeless families with children.<sup>45</sup> Black families were disproportionately vulnerable going into the 2008 housing crisis. The 2008 housing crisis and the government's inadequate response caused disproportionate harm to low-income people of color with Black families losing their homes at the rate of white families.<sup>46</sup> Similarly, the COVID-19 pandemic and economic collapse of 2020 devastated millions of families particularly people with low incomes and people of color. The COVID-19 pandemic has led to unprecedented crises and loss throughout the country. Recent

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<sup>43</sup> Patrick Sharkey, *Ending Urban Poverty: The Inherited Ghetto*, The Boston Review (Jan. 1, 2008) <http://bostonreview.net/patrick-sharkey-inherited-ghetto-racial-inequality>; Rejane Frederick, *The Environment That Racism Built*, Center for American Progress (May 10, 2018), <https://www.americanprogress.org/issues/race/news/2018/05/10/450703/environment-racism-built/>.

<sup>44</sup> *The State of the Nation's Housing*, Joint Center for Housing Studies of Harvard University (2020), [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_The\\_State\\_of\\_the\\_Nations\\_Housing\\_2020\\_Report\\_Revised\\_120720.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2020_Report_Revised_120720.pdf)

<sup>45</sup> *Homelessness and Racial Disparities*, National Alliance to End Homelessness (2020), <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/inequality/>.

<sup>46</sup> Sarah Burd-Sharps and Rebecca Rasch, *Impact of the US Housing Crisis on the Racial Wealth Gap Across Generations*, Social Science Resource Council and the American Civil Liberties Union (June 2015), [https://www.aclu.org/sites/default/files/field\\_document/discrimlend\\_final.pdf](https://www.aclu.org/sites/default/files/field_document/discrimlend_final.pdf).

reports indicate that around 560,000 people have died from COVID-19 and over 31 million people have contracted the virus.<sup>47</sup> Nationwide, Black Americans are 3.4 times more likely to have died from COVID-19 than white Americans.<sup>48</sup>

As the pandemic continues, the nation finds itself in the midst of a foreclosure and eviction crisis which severely threatens the ability of Americans to maintain their homes and safely endure the pandemic. For example, in Mississippi nearly 60 percent of renter households are at risk of eviction, making it the third most housing insecure state in the United States.<sup>49</sup> The U.S. Census Bureau reported that from July 16-21, over 90,000 Black Mississippians were unable to cover their month's rent and about 103,000 had little or no confidence in their ability in meeting obligations for the rent in August.<sup>50</sup> Similarly, more than 42,000 Black Mississippians were unable meet their mortgage payment obligations during the same period and about 61,000 had little or no confidence in their ability to make a payment in August.<sup>51</sup> The current eviction and foreclosure crisis will only serve to further entrench economic inequality in the country.

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<sup>47</sup> *Coronavirus in the U.S.: Latest Map and Case Count*, New York Times (last visited April 9, 2021 1:03 PM), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

<sup>48</sup> *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM Research Lab (last updated March 5, 2021), <https://www.apmresearchlab.org/covid/deaths-by-race>; *COVID-19 hospitalization and deaths by race/ethnicity*, Centers for Disease Control and Prevention (last updated March 12, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

<sup>49</sup> Anna Wolfe, *Over half of Mississippi renters could face eviction during pandemic without protections from Congress*, MS Today (Aug. 13, 2020), <https://mississippitoday.org/2020/08/13/over-half-of-mississippi-renterscould-face-eviction-during-pandemic-without-help-fromcongress/#:~:text=BY%20ANNA%20WOLFE%20%7C%20AUGUST%2013,%2D19%20pandemic%2C%20researchers%20estimated.>

<sup>50</sup> U.S. Census Bureau, *Household Pulse Survey July 16-21* (July 29, 2020), <https://www.census.gov/data/tables/2020/demo/hhp/hhp12.html>.

<sup>51</sup> *Id.*

## **The Opportunity - Housing as Infrastructure**

This moment presents an opportunity, that Congress must rise to meet. For the resilience of the country, economic prosperity and the stability and prosperity of the American people, this moment demands Congress undertake a bold, comprehensive approach to the housing and infrastructure crisis. At this critical point in history, it is of paramount importance that any infrastructure bill addresses the impact of the deliberate and flawed policies of the past.

As the nation recovers from the pandemic, Congress must invest in solutions that address the underlying, structural causes for our nation's housing crisis, and advance policies needed to ensure housing programs work for Black and other historically disadvantaged communities.

As noted, after great economic crises, the government has historically pursued national housing initiatives reliant upon federal spending and control to bring about the responsible development and revitalization of housing and infrastructure.<sup>52</sup> However, in recent years, the role of federal, state, and local governments in creating housing infrastructure has largely diminished. The 1980s saw a shift in policy, away from federally funded community development projects relating to public goods like housing, to limiting government involvement and instead centered an overreliance on the private sector to carry out the national public agenda.

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<sup>52</sup> Michael Neal & Alanna McCargo, *How Economic Crises and Sudden Disasters Increase Racial Disparities in Homeownership*, The Urban Institute (June 2020), <https://www.urban.org/sites/default/files/publication/102320/how-economic-crises-and-sudden-disasters-increase-racial-disparities-in-homeownership.pdf>.

Congress has the opportunity to address the impact of these deliberate policies, to take bold action to undo mistakes and the discriminatory policy choices of the past. The federal government must take swift and courageous action in approaching solutions to our current housing and infrastructure crises. It must take into account the fabric and make-up of communities in order to be successful. It must meet people where they are and include sincere community involvement.<sup>53</sup> Thriving communities require stable and accessible infrastructure. Communities exist because people settle to attend good public schools, find good paying jobs, are able to access safe and reliable transit, have a yard and beautiful green parks to enjoy. And a truly critical aspect of infrastructure of thriving and supportive communities is affordable housing. The construction and preservation of our country's affordable housing stock will strengthen economic growth, promote economic mobility, and provide greater household stability and improved wellness outcomes.

Discussions about housing as infrastructure, must be grounded in the context of affordability. Congress should increase the supply of affordable housing to people with the lowest incomes through the renovation and construction of public housing—as done in the past. Public housing is now associated with something bad or shameful, often viewed as a government hand-out or dirty. Much of the current public housing stock is run-down, outdated and located in poor and undesirable neighborhoods. However, public housing is the foundation upon which many white families built their wealth and was the steppingstone which allowed them to move into the middle class.<sup>54</sup> While the housing crisis is multifaceted, the lack of

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<sup>53</sup> Margery Austin Turner, *History of Place-Based Interventions*, U.S. Partnership on Mobility From Poverty (2017), <https://www.mobilitypartnership.org/publications/history-place-based-interventions>

<sup>54</sup> *Color of Law* supra note 5.



affordable housing cannot be overlooked. Rents have risen much faster than renters' incomes over the last two decades—renters' incomes have increased by only 5% while rents have risen 61%.<sup>55</sup>

### **Water Affordability**

Water affordability is also a growing crisis as this nation's crumbling infrastructure contributes to high water bills and the loss of home ownership. Throughout its history, LDF has consistently worked to address inequities in the provision of water services. In the late 1960s, LDF litigated *Hawkins v. Shaw*, the first lawsuit seeking to redress racial disparities in the provision of certain municipal services, including water and sewer services, under the 14th Amendment to the U.S. Constitution.<sup>56</sup> In *Hawkins*, the Fifth Circuit Court of Appeals determined that the town of Shaw, Mississippi, violated the constitutional guarantee of equal protection by failing to provide the same level of water, sewer, and other municipal services in its Black neighborhoods as were provided in Shaw's white neighborhoods.<sup>57</sup> In June 2019, LDF and its Thurgood Marshall Institute released a report entitled "Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities".<sup>58</sup> Our report discusses the link between racial discrimination and water affordability and explains the current water affordability crisis impacting Black communities across the nation.

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<sup>55</sup> Andrew Aurand, et. al., *Advancing Racial Equity in Emergency Rental Assistance Programs*, Furman Center (2021), [https://nlihc.org/sites/default/files/HIP\\_NLIHC\\_Furman\\_Brief\\_FINAL.pdf](https://nlihc.org/sites/default/files/HIP_NLIHC_Furman_Brief_FINAL.pdf); *Out of Reach: The High Cost of Housing*, National Low Income Housing Coalition (2020), <https://nlihc.org/resource/nlihc-releases-out-reach-2020#:~:text=NLIHC%20released%20Out%20of%20Reach,Housing%202020%20on%20July%2014.&text=in%202020%20the%20national%20two,rent%20of%20%241%2C246%20per%20month>.

<sup>56</sup> *Hawkins v. Shaw*, 303 F. Supp. 1162 (N.D. Miss. 1969).

<sup>57</sup> *Hawkins v. Shaw*, 437 F.2d 1286, 1290 (5th Cir. 1971), affirmed by *Hawkins v. Shaw*, 461 F.2d 1171, 1173 (5th Cir. 1972).

<sup>58</sup> Coty Montag, NAACP Legal Def. & Educ. Fund, Inc., *Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities* (2019), <https://tminstituteldf.org/publications/2383/>.

Our report finds that as government policies of the 20<sup>th</sup> century made cities more racially segregated, localities began to prioritize water services to white areas. As part of the white housing boom, American homes were significantly modernized. By 1940, approximately 94 percent of urban homes had clean running piped water and sewer pipes for waste disposal, and more than 80 percent had interior flush toilets.<sup>59</sup> New technologies—such as automatic dishwashers, washing machines, and air conditioners—increased Americans’ water usage and strained existing infrastructure.<sup>60</sup> Discrimination in both the public and private sectors restricted not only housing options in Black communities, but relegated African Americans to sub-par water supply and access.

The Clean Water Act of 1972 required municipalities to expend significant funds to build and upgrade facilities to treat water. The federal government funded most of these improvements following passage of the statute. In the 1970s, federal funding for water systems was at an all-time high, peaking in 1977.<sup>61</sup> When adjusted for inflation, the federal government provided about \$80 billion to local utilities to construct and upgrade treatment facilities in the 15 years after the law was enacted.<sup>62</sup> Many of these infrastructure improvements disproportionately benefited white families as the same policies that restricted African Americans from accessing housing, restricted African Americans from accessing clean water.

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<sup>59</sup> Robert J. Gordon, *The Rise and Fall of American Growth: The U.S. Standard of Living Since the Civil War* (2017).

<sup>60</sup> Martin V. Melosi, *The Sanitary City: Environmental Services in Urban America from Colonial Times to the Present* (2008).

<sup>61</sup> U.S. Cong. Budget Office, *Public Spending on Transportation and Water Infrastructure*, Publ’n No. 49910, (Sept. 5, 2017), <https://www.cbo.gov/publication/49910> (follow URL and then select link to the “Supplemental Tables” in the “Data and Supplemental Information” section).

<sup>62</sup> David Sedlak, *Water 4.0: The Past, Present, and Future of the World’s Most Vital Resource* (2015).

By far, the biggest factor contributing to rising water costs in the United States is aging and failing infrastructure. Pipes installed at the beginning of the 20th century, in the post-World War II era, and during the 1970s Clean Water Act construction boom all require replacement now, due to varying materials and techniques used during these periods.<sup>63</sup> Utilities nationwide have ranked the renewal and replacement of aging water and wastewater infrastructure as the most pressing issue facing the industry every year since at least 2014.<sup>64</sup> At the current replacement rate, it will take another 200 years before the million pipes across the country are fully replaced.<sup>65</sup> Failures in drinking water infrastructure can lead to significant issues, including water disruptions, impediments to emergency response, and unsanitary health conditions.<sup>66</sup> Water main breaks are estimated to cost \$2.6 billion annually.<sup>67</sup>

## **Conclusion**

The current disparities in housing and homeownership are the result of decades of government policy, some intentionally discriminatory and some woefully negligent. It is incumbent upon the federal government to do its duty and right these wrongs. Fifty-two years after the passage of the Fair Housing Act, our nation still struggles with entrenched housing segregation that contributes to nearly insurmountable societal repercussions. Congress must do everything within its power to ensure that the federal fair housing laws are fully enforced

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<sup>63</sup> American Society of Civil Engineers, *2017 Infrastructure Report Card: Drinking Water* (2017), <https://www.infrastructurereportcard.org/wp-content/uploads/2017/01/Drinking-Water-Final.pdf>.

<sup>64</sup> American Water Works Association, *2018 State of the Water Industry Report* (2018), [https://www.awwa.org/Portals/0/AWWA/Development/Managers/2018\\_SOTWI\\_Report\\_Final\\_v3.pdf](https://www.awwa.org/Portals/0/AWWA/Development/Managers/2018_SOTWI_Report_Final_v3.pdf)

<sup>65</sup> *2017 Infrastructure Report Card: Drinking Water* (2017) supra note -2

<sup>66</sup> American Society of Civil Engineers, *Failure to Act: Closing the Infrastructure Investment Gap for America's Economic Future* (2016), <https://www.infrastructurereportcard.org/wp-content/uploads/2016/10/ASCE-Failure-to-Act-2016-FINAL.pdf>.

<sup>67</sup> Patricia Buckley, Lester Gunnion & Will Sarni, *The Aging Water Infrastructure: Out of Sight, Out of Mind?* (Mar. 21, 2016), <https://www2.deloitte.com/insights/us/en/economy/issues-by-the-numbers/us-aging-water-infrastructure-investment-opportunities.html>.

and must take serious action to create policies to address/rectify the years of discriminatory policies and practices which have led to the tremendous inequalities we see today.

We urge Congress to consider the following policy recommendations in any consideration of comprehensive infrastructure reform:

- Infrastructure investments in affordable housing stock, urban water systems, public transit, community facilities and centers, schools and telecommunications.
- Prioritize infrastructure investments in communities and areas which have long been neglected and need them most.
- Vigorous enforcement of Affirmatively Furthering Fair Housing.
- Rigorous Title VI enforcement for federal funds supporting local projects.
- Environmental justice review and enforcement.

Thank you for the opportunity to submit this testimony. LDF remains available to provide additional information to this Committee.